

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 529 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BIHOLA RATUJI SAMAJI

Versus

STATE OF GUJARAT

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Appearance:

MR TUSHAR MEHTA for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/06/98

ORAL JUDGEMENT

Rule.

In the facts and circumstances of the case this petition is taken up for final disposal to-day.

2. This petition under Article 226 of the Constitution is filed by 22 petitioners for challenging the order dated 18-9-1997 passed by the Prant Officer

under Section 203 of the Bombay Land Revenue Code in Land Appeal No.SR 7 of 1997 dismissing the petitioners' appeal and confirming the order dated 20-3-1997 passed by the Mamlatdar, Gandhinagar, in Encroachment Case No. 90 to 124 of 1992 and calling upon the petitioners to remove the encroachment and hand over the vacant possession of the land to the Government through the Mamlatdar, Gandhinagar.

3. The Mamlatdar Gandhinagar had issued show cause notice to the petitioners and nine other persons in respect of the land in S.No.227 of village Palej, Taluka Gandhinagar, calling upon the said parties to show cause why the petitioners should not be required to remove the encroachment from the aforesaid land which is Government waste land. The petitioners however, did not appear before the Mamlatdar but two persons i.e. the Chairman, Palej Gopalak Ganotia Sahakari Mandli Ltd. and the President of Harijan Ganotia Sahakari Mandli Ltd., appeared before the Mamlatdar and submitted that their applications for regularization of their possession of the land in question were pending before the Government and therefore, no eviction proceedings may be continued against them. In above view of the matter, the Mamlatdar, Gandhinagar, dropped the eviction proceedings against the aforesaid two parties and passed eviction order against 29 persons including the present petitioners.

4. Aggrieved by the above order the petitioners preferred appeal before the Prant Officer, Gandhinagar, who dismissed the appeal by the order which is challenged in this petition.

5. Mr.Tusar Mehta,learned Counsel for the petitioner has submitted at the hearing of this petition that the petitioners have been occupying the land in question for last about 50 years and that they have been cultivating the said land after spending huge amount in order to make the waste land cultivable and fertile. It is further stated that the petitioners' names are also entered in the revenue record, particularly Village forms No. 7 and 12 and the petitioners have been shown as agriculturists cultivating the above land. The petitioners are also prepared to apply to the authorities for regularization of their encroachment over the land in question. Therefore, the petitioners are also required to be treated on the same footing on which the aforesaid two persons have been treated by dropping the eviction proceedings against them.

It is further submitted that the authorities could not have proceeded under Section 61 of the Bombay Land Revenue Code and that the matter was required to be decided under Section 37(2) of the Bombay Land Revenue Code, especially when the petitioners have been cultivating the said land for the last about 50 years.

6. Mr. Joshi, learned AGP appearing for the respondents, has contested the petition and has submitted that since the aforesaid two parties had already applied for regularization, the petitioners do not stand on the same footing.

7. The Court would like to observe that normally when the cases are brought before the Courts by encroachers seeking protection against the authorities from eviction, the Courts are ordinarily reluctant to grant any protection as encroachments over public lands are not to be encouraged. However, the Court is informed that there are no other agricultural claimants for the land in question. It is also claimed that the petitioners have converted the Government waste lands into fertile agricultural lands and they have been carrying on agricultural activities on such lands for many decades. Utilization of the Government Waste land for agricultural activity itself is an activity which is not only not injurious to the land and the society at large but positively beneficial to them and, therefore, in the facts and circumstances of the case, it appears to the Court that the interests of justice would be served if the petitioners are permitted to apply to the authorities for regularization of their encroachment over the Government waste land in question only for the purpose of carrying on agricultural operations and the authorities are directed to decide such applications in accordance with the relevant Government rules, resolutions and circulars which may be applicable to the facts on hand. On the other hand the petitioners shall also have to comply with all the terms and conditions which may be imposed by the authorities in accordance with the relevant rules and resolutions/circulars, in case their applications are allowed by the authorities.

9. This petition is accordingly partly allowed. In case the petitioners apply to the authorities for regularization of their possession over the Government waste land in question being S.No.227 of village Palej, District Gandhinagar on or before 3-7-1998, the respondents shall consider the same in accordance with the relevant rules, resolutions and circulars, within

three months from the date of receipt of the applications. Till the applications are decided the respondents shall not evict the petitioners from the land in question.

10. Rule is made absolute to the aforesaid extent only with no order as to costs.

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